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MAY 26,99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Nova Clothing Company, L.L.C.

Serial No. 75/229,424

Evan M. Kent and Lucy B. Arant of Russ August & Kabat for
Nova Clothing Company, L.L.C.

Elizabeth A. Dunn, Trademark Examining Attorney, Law Office
109 (Chris Pedersen, Managing Attorney).

Before Quinn, Wendel and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Nova Clothing Company, a California limited liability
corporation, filed an application for registration of the
mark "NOVA" for "women's clothing, namely, dresses,
blouses, skirts, jackets and pants."¹

The Trademark Examining Attorney issued a final
refusal to register based upon Section 2(d) of the

Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, "NOVA," when used on these items of women's clothing, so resembles the following registered marks:

- "NOVA SHEERS" as applied to "pantyhose,"² and
- "HAGGAR NOVA" as applied to "men's and boy's clothing, namely slacks,"³

as to be likely to cause confusion, or to cause mistake, or to deceive.

Applicant has appealed the final refusal to register. Briefs have been filed but applicant did not request an oral hearing. We affirm the refusal to register with regard to both cited registrations.

In the course of rendering this decision, we have followed the guidance of In re E.I. du Pont DeNemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973), which case sets forth the factors that should be considered, if relevant, in determining likelihood of confusion.

¹ Serial No. 75/229,424, filed January 22, 1997, alleging use since June 1995.

² Registration No. 1,510,208, issued on October 25, 1988. The registration sets forth dates of first use of November 24, 1987; §8 affidavit accepted and §15 affidavit filed.

Reg. No. 1,510,208, "NOVA SHEERS" on pantyhose

Under the first of the du Pont factors, we examine closely the sound, appearance, meaning and overall commercial impression of applicant's mark, "NOVA," compared with registrant's "NOVA SHEERS." The Trademark Examining Attorney contends that the word "NOVA" is dominant in both marks. On the other hand, applicant argues that the marks in their entireties are totally dissimilar as to sound, and are different in appearance and meaning.

When making a likelihood of confusion determination under Section 2(d) of the Act, we must view the respective marks in their entireties. Yet, one feature of a mark may be recognized as having greater significance in creating the overall commercial impression. In this context, greater weight can be given to a dominant feature in determining whether there is a likelihood of confusion. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) ["CASH MANAGEMENT ACCOUNT" confusingly similar to "THE CASH MANAGEMENT EXCHANGE"]; Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (CCPA 1976) [composite mark comprising a square design containing a large, stylized letter "D" over the words "DAKTRONICS

³ Registration No. 1,465,600 issued on November 17, 1987.

INC.," is not confusingly similar to "TEKTRONIX"]; and In re J.M. Originals Inc., 6 USPQ2d 1393 (TTAB 1988) ["JM ORIGINALS" is confusingly similar to "JM COLLECTABLES"].

We find that in the registered mark, the word "SHEERS" is highly descriptive of pantyhose. "SHEERS" adds very little in the way of source indicating value to this composite mark, and quite properly has been disclaimed. Thus, the dominant portion of the registrant's "NOVA SHEERS" mark is the word "NOVA" -- the only arbitrary matter in registrant's mark. We are not ignoring the descriptive word "SHEERS," but acknowledging that descriptive, disclaimed matter is typically less significant in a likelihood of confusion analysis. Hence, applicant's entire mark herein is identical to the dominant, non-disclaimed portion of registrant's mark.

In discussing the applicant's and registrant's goods, the Trademark Examining Attorney (brief, p. 3) notes that this Board and the federal courts have found many different types of apparel to be related:

The decisions in this field have held many different types of apparel related under Section 2(d). Cambridge Rubber Co. v. Cluett, Peabody & Co., Inc., 286 F.2d 623, 128 USPQ 549 (CCPA 1961) ("WINTER CARNIVAL"

The registration sets forth dates of first use of December 15, 1986; §8 affidavit accepted and §15 affidavit filed.

for women's boots v. men's and boys' underwear); Jockey International, Inc. v. Mallory & Church Corp., 25 USPQ2d 1233 (TTAB 1992) ("ELANCE" for underwear v. "ELAAN" for neckties); In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991) ("ESSENTIALS" for women's pants, blouses, shorts and jackets v. women's shoes); In re Pix of America, Inc., 225 USPQ 691 (TTAB 1985) ("NEWPORTS" for women's shoes v. "NEWPORT" for outer shirts); In re Mercedes Slacks, Ltd., 213 USPQ 397 (TTAB 1982) ("OMEGA" for hosiery v. trousers); In re Cook United, Inc., 185 USPQ 444 (TTAB 1985) ("GRANADA" for men's suits, coats, and trousers v. ladies' pantyhose and hosiery); Esquire Sportswear Mfg. Co. v. Genesco Inc., 141 USPQ 400 (TTAB 1964) ("SLEEX" for brassieres and girdles v. slacks for men and young men).

The Trademark Examining Attorney goes on to point out that this legal precedent merely confirms the industry practice as reflected elsewhere in the record. She submitted several dozen extant trademark registrations, all based on use in commerce, showing use of the same mark in connection with pantyhose and women's dresses. She argues that clothing manufacturers offer a myriad of apparel items under the same mark, and that the purchasing public is accustomed to this wide range of articles of clothing and accessories emanating from the same source.

By contrast, applicant argues that these goods involve unrelated trade channels, and that furthermore we must consider these consumers to be discriminating purchasers because the enumerated clothing items are relatively

expensive. There is no evidence in the file supporting either contention.

It seems self-evident that these goods are somewhat different, but equally apparent that women's pantyhose are sold in many of the same retail establishments which also have for sale women's outer clothing items, such as dresses, blouses, skirts, jackets and pants.

In the absence of a specific limitation in the registration certificate, we must assume that registrant's pantyhose travel in the usual channels of trade for such goods. *In re Elbaum*, 211 USPQ 639 (TTAB 1981).

Accordingly, we conclude that such closely related items reach the same class of ordinary purchasers by moving through the same trade channels (e.g., department stores, boutiques, mail-order catalogues, on-line sites, etc.).

Hence, we agree with the position taken by the Trademark Examining Attorney, and find a likelihood of confusion as to the mark in Reg. No. 1,510,208.

Reg. No. 1,465,600, "HAGGAR NOVA" slacks for men & boys

As with the first cited registration, we examine closely the sound, appearance, meaning and overall commercial impression of the mark, "NOVA," compared with

"HAGGAR NOVA." The owner of this registration for men's and boy's slacks is the Hagggar Clothing Co.

The Trademark Examining Attorney contends that the word "NOVA" is the dominant portion of this cited mark as well. Again, applicant argues that the marks in their entirety are totally dissimilar as to sound, and are different in appearance and meaning. Much of the disagreement on this point between the Trademark Examining Attorney and applicant centers on the fact that the first word of the mark is "HAGGAR," registrant's house mark. The Trademark Examining Attorney argues that a likelihood of confusion is not avoided by the addition of this house mark, while applicant argues that the addition of Hagggar's house mark eliminates any likelihood of confusion.

Upon reflection, we find that the presence of registrant's house mark does not avoid a likelihood of confusion. See In re Christian Dior, S.A., 225 USPQ 533 (TTAB 1985) [the addition of house mark "DIOR" in applicant's mark "LE CACHET DE DIOR" for men's shirts does not avoid likelihood of confusion with mark "CACHET" for dresses and toiletries].⁴ To the extent they already know

⁴ See also Menendez v. Holt, 128 U.S. 514 (Sup. Ct. 1888); A.T. Cross Co. v. Jonathan Bradley Pens, Inc., 470 F.2d 689, 176 USPQ 15 (2nd Cir. 1972); W. E. Bassett Co. v. Revlon, Inc., 435 F.2d 656, 168 USPQ 1 (2nd Cir. 1970); Hat Corp. of America v. John

of the "HAGGAR" house mark, prospective purchasers will conclude that "Haggar" is the name of the entity that is the source of these clothing, and "NOVA" functions as a separate product mark. But of course, "NOVA" is applicant's entire mark. Inevitably, these prospective purchasers would assume that when "NOVA" appears on two such similar products, they both come from the same source. In fact, the consumer acquainted with registrant's "HAGGAR NOVA" slacks for men, upon seeing applicant's "NOVA" pants for women, is likely to assume this is simply a case of Haggar's expanding its pre-existing "... NOVA" line into women's wear.

Much of our earlier discussion, *supra*, about the myriad of clothing items found to be related, applies equally here to the close relationship between applicant's women's dresses, blouses, skirts, jackets and pants, on the one hand, and registrant's men's and boy's slacks, on the other hand. In the absence of a specific limitation in the registration certificate, we must assume that registrant uses the mark on all kinds of slacks for males, and that

B. Stetson Co., 223 F.2d 485, 106 USPQ 200 (CCPA 1955); *Hammermill Paper Co. v. Gulf States Paper Corp.*, 337 F.2d 662, 143 USPQ 237 (CCPA 1964); and *In re Dennison Manufacturing Company*, 229 USPQ 141, 144 (TTAB 1986).

these goods travel in the usual channels of trade for such goods.

We know that men's slacks and women's pants are usually different in their design, and are normally sold in different sections of major department stores and other retail outlets. Yet, the case law and third-party registrations demonstrate that consumers are aware of extensions across the gender gap by many manufacturers. In fact, our principal reviewing Court and this Board have on numerous occasions held that the sale of different items of wearing apparel -- including items intended for a different gender of consumer -- under the same or similar marks, is likely to cause confusion in trade. This has been based essentially upon common trade channels; common purchasers and, in particular, the likelihood of adults purchasing apparel for their friends and family members of the other gender; and the function of a trademark as a single source indicator. In what is still good precedent, this Board held, in circumstances where the goods are even more dissimilar than is true with the instant goods, that such source confusion is likely:

With respect to applicant's men's shirts vis-a-vis dresses, while the respective goods are used by people of different sexes,

it is clear that dresses are often purchased by men for women and the same is true with respect to men's dress shirts being purchased by women for men. Both dresses and men's shirts are found in non specialty clothing stores as well as department stores. That men's shirts and dresses would emanate from a single source under the same trademark is evidenced by applicant's own admission that it uses the mark "CHRISTIAN DIOR" as a trademark for both men's clothing and women's clothing...

In re Christian Dior, S.A., *supra*, at p. 534.

Accordingly, we agree again with the position taken by the Trademark Examining Attorney, and find a likelihood of confusion as to the mark in Reg. No. 1,465,600.

Decision: Both of the refusals to register are affirmed.

T. J. Quinn

H. R. Wendel

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board